

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BEARBOX LLC and AUSTIN STORMS,

Plaintiffs,

V.

LANCIUM LLC, MICHAEL T. MCNAMARA,  
and RAYMOND E. CLINE, JR.

Defendants.

**REDACTED PUBLIC VERSION**

C.A. No. 21-534-MN-CJB

**PLAINTIFFS' SEPARATE CONCISE STATEMENT OF MATERIAL FACTS  
FOR TRIAL REGARDING ITS INVENTORSHIP AND CONVERSION CLAIMS**

ASHBY & GEDDES  
Andrew C. Mayo (#5207)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899  
(302) 654-1888  
amayo@ashbygeddes.com

*Of Counsel:*

Benjamin T. Horton  
John R. Labbé  
Raymond R. Ricordati, III  
Chelsea M. Murray  
MARSHALL, GERSTEIN & BORUN LLP  
233 South Wacker Drive  
6300 Willis Tower  
Chicago, IL 60606-6357  
(312) 474-6300

*Attorneys for Plaintiffs  
BearBox LLC and Austin Storms*

Dated: July 19, 2022

Pursuant to the Court’s Scheduling Order (D.I. 35), Plaintiffs BearBox LLC (“BearBox”) and Austin Storms (“Storms”) (collectively, “Plaintiffs”) submit the following concise statement of material facts for trial regarding their inventorship and conversion claims and in support of their opposition to Defendants’ motion for summary judgment.

1. Before May 9, 2019, [REDACTED]

[REDACTED] Ex. J<sup>1</sup> (Ehsani Report) at ¶ 76; Ex. P (LANCIUM00033064-65); Ex. H (Cline Tr.) at 71-72:12-25.

2. [REDACTED] Ex. F (McNamara Tr. at 55:15-22).

3. Storms conceived all of the inventions claimed in the ’433 patent at least as of May 1, 2019. D.I. 151, Ex. 3, (McClellan Opening Report at ¶¶ 54-169 and Appendix A); Ex. E, (Storms Tr. 306-307:20-14); D.I. 151, Ex. 20 (Plaintiffs’ Second Supplemental Responses to Interrogatories 2-3).

4. Storms has substantial evidence to corroborate the fact that he conceived all of the inventions claimed in the ’433 patent at least as of May 1, 2019. D.I. 151, Ex. 3 (McClellan Opening Report) at ¶¶ 54-169 and Appendix A; D.I. 151, Ex. 4 (McClellan Reply Report) at ¶¶ 146-214; D.I. 151, Ex. 20 (Plaintiffs’ Second Supplemental Responses to Interrogatories 2-3); Ex. A (BB00000001-89); Ex. BB (BB\_SC00000001-12, 15-22, 25-26, 39, 47, 45-49, 52-23 and 55-67).

5. Storms communicated to Defendants all of the inventions claimed in the ’433 patent at least as of May 9, 2019. D.I. 151, Ex. 3 (McClellan Opening Report at ¶¶ 170-294); Ex. A (BB00000090-97); Ex. E (Storms Tr.) at 86-113; Ex. H (Cline Tr.) at 138-150:15-20; Ex. L at LANCIUM00014645-52; Ex. K (Ehsani Tr.) at 125-126:8-17, 131-132:7-18, and 133-141:4-8.

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<sup>1</sup> All references to “Ex. \_\_” are to the Exhibits to the Declaration of Chelsea M. Murray submitted herewith.

6. Michael T. McNamara respects and complies with confidentiality notices in email footers, like the one in Mr. Storms' May 9, 2019 email, even when he receives emails from an entity with which Lancium does not have a non-disclosure agreement in place. Ex. F (McNamara Tr.) at 128-129:18-2.

7. Defendants understood the column headers, numeric values, and their various mathematical relationships, as presented in Storms' Excel document (BB00000097) as of May 2019. Ex. H (Cline Tr.) at 139-150.

8. Despite energy arbitrage being a generally known concept within ERCOT as of 2019, it is possible to come up with new ways of performing energy arbitrage. Ex. W (Siddiqi Tr.) at 57-58.

9. [REDACTED]  
[REDACTED] Ex. J (Ehsani Report ¶ 76); Ex. P at LANCIUM00033064-65; Ex. H (Cline Tr. at 127-128:17-22); Ex. AA (LANCIUM00036373).

10. There is no evidence of use by Lancium, or anyone other than Storms, of the specific Bitcoin miner breakeven method of energy arbitrage in dispute [REDACTED]  
[REDACTED]. Ex. W (Siddiqi Tr. at 22, 24, 37); D.I. 151, Ex. 1 (McCamant Opening Report) at 16-17.

11. Defendants understood before filing Provisional Patent Application No. 62/927,117 that [REDACTED]  
[REDACTED] Ex. H (Cline Tr. at 166:8-11); Ex. F (McNamara Tr.) 97:8-17, 103:13-16; Ex. R (LANCIUM00033139); Ex. Y (LANCIUM00031222).

12. [REDACTED]  
[REDACTED]. Ex. R (LANCIUM00033139); Ex. F (McNamara Tr.) at 92:12-16.

13. Neither McNamara nor Cline wrote any source code or built any hardware in connection with their alleged conception of the inventions claimed in the '433 patent. Ex. F (McNamara Tr.) at 53-54:16-5; Ex. H (Cline Tr.) at 35:1-16; Ex. V (Henrique Tr.) at 62:22-24.

14. Lancium's complaint against Layer1 for allegedly infringing U.S. Patent No. 10,608,433 does not even use the word "breakeven," let alone disclose a specific Bitcoin miner breakeven value-based arbitrage method for trading energy. D.I. 151, Ex. 19 (Layer1 Complaint).

15. Even by the Defendants' expert witness's own admissions, any alleged gaps in Storms' disclosure to Defendants in the documents Storms provided to Defendants, Storms could have easily filled in those gaps verbally over dinner. Ex. K (Ehsani Tr.) at 140-141:17-6.

16. Even by the Defendants own admissions, [REDACTED]

[REDACTED]. In other words, Defendants derived all of the inventions claimed in the '433 patent from Storms. D.I. 151, Ex. 3 (McClellan Opening Report) at ¶¶ 170-294; D.I. 151, Ex. 4 (McClellan Reply Report) at ¶¶ 18-69; Ex. A (BB00000090-97); Ex. E (Storms Tr.) at 86-113; Ex. CC (Defendants' Second Supplemental Response to Interrogatory No. 3); Ex. J (Ehsani Report) at ¶ 116.

17. The Defendants are not inventors of any of the inventions claimed in the '433 patent. D.I. 151, Ex. 4 (McClellan Reply Report) at ¶¶ 18-69.

ASHBY & GEDDES

*/s/ Andrew C. Mayo*

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Andrew C. Mayo (#5207)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899  
(302) 654-1888  
amayo@ashbygeddes.com

*Of Counsel:*

Benjamin T. Horton  
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MARSHALL, GERSTEIN & BORUN LLP  
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6300 Willis Tower  
Chicago, IL 60606-6357  
(312) 474-6300

*Attorneys for Plaintiffs*  
*BearBox LLC and Austin Storms*

Dated: July 19, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of July, 2022, the attached **PLAINTIFFS' SEPARATE CONCISE STATEMENT OF MATERIAL FACTS FOR TRIAL REGARDING ITS INVENTORSHIP AND CONVERSION CLAIMS** was served upon the below-named counsel of record at the address and in the manner indicated:

Chad S.C. Stover, Esquire  
Barnes & Thornburg LLP  
222 Delaware Avenue, Suite 1200  
Wilmington, DE 19801

VIA ELECTRONIC MAIL

Mark C. Nelson, Esquire  
Barnes & Thornburg LLP  
2121 N. Pearl Street, Suite 700  
Dallas, TX 75201

VIA ELECTRONIC MAIL

Adam M. Kaufmann, Esquire  
Barnes & Thornburg LLP  
One N. Wacker Drive, Suite 4400  
Chicago, IL 60606-2833

VIA ELECTRONIC MAIL

*/s/ Andrew C. Mayo*

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Andrew C. Mayo